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**I N D E X**

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1 P R O C E E D I N G S

2 COURT SECURITY OFFICER: All rise.

3 THE COURT: Good morning. Please be seated.

4 For the record, we're here for the claim construction  
5 hearing in Sentius International versus BlackBerry, which is  
6 Case No. 2:16-773 on our docket.

7 Would counsel state their appearances for the record?

8 MR. DAVIS: Good morning, Your Honor. Stafford Davis  
9 on behalf of Plaintiff, and with me is Sandeep Seth and Robert  
10 Yorio.

11 THE COURT: All right. Thank you, Mr. Davis.

12 MR. YORIO: Good morning.

13 THE COURT: Good morning.

14 MR. PARKS: Good morning, Your Honor. Michael Parks  
15 on behalf of Defendants, with my colleagues Tony Blum and  
16 Sartouk Moussavi.

17 THE COURT: All right. Thank you, Mr. Parks.

18 I will also state for the record that earlier this  
19 morning we distributed to counsel for both sides a set of  
20 preliminary constructions.

21 The purpose of those preliminary constructions is not  
22 to dissuade either side from taking whatever position they feel  
23 is appropriate on these disputed terms. Rather, the purpose is  
24 to let the parties know where the Court is after the initial  
25 review of the briefs and the record and to allow you to focus

1 your arguments and your time where you think the Court may have  
2 most missed the mark.

3 I do reserve the right to alter these preliminary  
4 constructions, and not uncommonly do change them based on the  
5 arguments received at this hearing, so I hope that you'll take  
6 them in that spirit.

7 I'll also say that on several of the means plus  
8 function terms, you'll notice that there is no structure  
9 provided in the preliminary construction. That is a reflection  
10 of the conclusion that the structure that was offered by the  
11 Plaintiff in its proposed constructions is not adequate.

12 I -- I -- the ones that we have left blank are ones  
13 where I believe that the structure proposed by the Plaintiff  
14 was largely a computer performing the function, and I believe  
15 that the current jurisprudence on 112(6) requires that software  
16 limitations in the 112(6) context must have some algorithm.

17 And so what I am calling upon the Plaintiff to do is  
18 to identify for me an algorithm that is clearly linked in the  
19 specification to the function, and I am not doubting that you  
20 can do that, but I have not seen that yet, and that's what  
21 I'm --

22 The briefing is painted with a broad brush, and what  
23 I want from the Plaintiff now is something that I think is  
24 adequate for a claim construction, so that's -- that's why that  
25 is left the way it is.

1 But any in any event, I would like to hear the  
2 arguments on a term-by-term basis. I'm happy to have counsel  
3 group them if you think that's efficient. I'm happy to take  
4 them in whatever order the parties think is best, and you can  
5 start with the first one or you can start with what you think  
6 is the most important ones. I'll leave that up to you.

7 But having said that, I'll turn it over first to  
8 counsel for Plaintiff.

9 MR. SETH: Thank you, Your Honor.

10 We have looked at the preliminary constructions, and  
11 it is my intention to I think focus the Court on the areas just  
12 described.

13 But before we get there, I would like to -- if we can  
14 go to slide two -- reflect that the patent itself builds the  
15 algorithm of the invention into the claim, and it's a system  
16 claim, but as the Court is well aware now, it's a 13-element  
17 claim.

18 And what -- why that claim is so long and has so many  
19 elements is because the algorithm is built -- baked right into  
20 the claim. An algorithm is a step-by-step process, and that's  
21 for Enfish, and what we do is we give the steps that are  
22 necessary to practice of this invention.

23 And backing up just one step, this is a software  
24 patent. This is a software patent that takes a visual editor  
25 program, such as Word or any other visual editor that uses

1 graphical interface, and it takes the existing functionality of  
2 that program, and then it adds a functionality, so kind of  
3 like, you know, adding a blind spot detector to a car, we are  
4 adding a functionality.

5 The functionality that we're adding to the existing  
6 functionality of the visual editor is the functionality of how  
7 we're going to take words that are in the document, and we're  
8 going to link those to the external reference material we want.

9 In the example given in the patent, external  
10 reference material was Japanese translations -- or English  
11 translations, I should say, for Japanese words. So the way  
12 we're doing that is through the use of the look-up table, which  
13 is a structure that is outside of the tech stream.

14 And we're going to take that look-up table, and we're  
15 going to take the pre-existing functionality of the visual  
16 editor, which already parses the document, identifies the words  
17 that are in the document, determines their position in the  
18 document relative to the beginning of the document.

19 And then for words of interest, we're going to take  
20 those starting and ending positions, record them in the look-up  
21 table, and we're going to also record for that entry in the  
22 look-up table a pointer to whatever external reference material  
23 we want.

24 The patent leaves open how you want to apply it, so  
25 you might want to apply the external reference material to an

1 English translation, or you may want to apply the external  
2 reference material that you're going to be retrieving to  
3 suggested spelling corrections.

4 THE COURT: Mr. Seth, let me -- I hesitate to  
5 interrupt you, but I -- I'm having -- I'm distracted by a  
6 question, so I'm going to ask it.

7 MR. SETH: Okay.

8 THE COURT: And that is, what you're describing to me  
9 sounds like a method claim, and this is a system claim, and  
10 you've got all these means laid out in here, and your argument  
11 is that you can claim anything that does this function by the  
12 way you've done it without revealing any more structure than  
13 the function itself.

14 MR. SETH: I don't believe that's the argument that  
15 I'm making. I believe --

16 THE COURT: Well, what is the structure then?

17 MR. SETH: Well, so the claim lays out for each of  
18 the algorithmic steps basically a software module that is  
19 programmed to do that step, and the question is whether or not  
20 we have specification support for that step.

21 THE COURT: All right. So you're saying that there  
22 is an algorithm for each step?

23 MR. SETH: There is an algorithm for each -- no, I'm  
24 saying -- I am saying that each step is described in the  
25 specification, and the -- the specificity of the algorithm, for

1 example, depends upon to some degree on the level of skill in  
2 the art for Enfish.

3 So if they're known techniques, for example,  
4 identifying the -- the location of each words in the document,  
5 that's a known technique. So the step-by-step on how that  
6 you're going to do a known technique is not something that's  
7 going to be specified necessarily in the spec, but --

8 THE COURT: The passage from Enfish that you have  
9 relied upon --

10 MR. SETH: Yes.

11 THE COURT: -- starts off with what you're relying  
12 upon, but finishes in the same sentence, but there must be some  
13 structure, and that's for each 112(6) limitation, right? I  
14 mean, it's -- I don't understand that to say that the  
15 limitation can satisfy 112(6) without any disclosed structure  
16 just because a person of ordinary skill would know how to do  
17 it.

18 I mean, are you arguing to the contrary, that it is  
19 sufficient under 112(6) for a limitation just to be known to  
20 one of skill?

21 MR. SETH: I believe that there should be  
22 specification support, but the extent of the specification  
23 support does not include details that would be known to one of  
24 ordinary skill in the art.

25 THE COURT: When you say specification support, is it



1 all right if I understand structure? Is that disclosed  
2 structure? Is that what you're referring to when you say  
3 specification support?

4 MR. SETH: Yes.

5 THE COURT: Okay. Then I don't know that we have a  
6 disagreement. I just -- what I have seen in your proposed  
7 structure for these various limitations doesn't show what the  
8 specification reveals. It just says a computer programmed to  
9 perform the function.

10 MR. SETH: Maybe the better approach, Your Honor, is  
11 to jump into some specificity.

12 THE COURT: Okay.

13 MR. SETH: Okay. Since Mr. Yorio will be covering a  
14 couple of the elements of the means for determining the  
15 beginning position address and the means for determining the  
16 starting point and ending point address, I will be addressing  
17 the means for converting and the means for selecting.

18 But I think it might make some logical sense if we  
19 first start with the determining the beginning of the address  
20 and starting point address. That's 12 and 14 in the outline --

21 THE COURT: All right.

22 MR. SETH: -- of the proposed.

23 THE COURT: That's fine.

24 MR. SETH: And then I'll come back to the terms 16  
25 and 17.

1 MR. YORIO: Good morning, Your Honor.

2 THE COURT: Good morning, Mr. Yorio.

3 MR. YORIO: I'd like to start with term 12 in the  
4 preliminary constructions, which is the first term where Your  
5 Honor has no identified structure there, and I understood Your  
6 Honor's comments at the beginning, and I see the way Your Honor  
7 has addressed the other elements.

8 And so for this term 12 and in keeping in sync with  
9 the way Your Honor has approached structure, I would say the  
10 structure for term 12 is a combination of the visual editor and  
11 the grammar parser together with the electronic viewing module.

12 And let me take Your Honor to some of the specific  
13 portions of the specification that deal with that. Slide 25.

14 THE COURT: And I know that the parties have used the  
15 '731 specification for purposes of the cites, so I'm going to  
16 be doing that, too, just so we're all on the same page.

17 MR. SETH: Both parties approached their briefing in  
18 the same way, Your Honor, so --

19 THE COURT: All right.

20 MR. YORIO: This is an excerpt from the '731 patent,  
21 and what is up on the screen now is figure one on the left and  
22 an excerpt from column five and column eight.

23 And of note to this particular term is the portion of  
24 the specification beginning on column five, line eight,  
25 beginning with a text file, and that sentence describes the

1 type of text or audio/visual information which can be included  
2 in the database.

3 And it includes sound, images, video which can be  
4 edited during the construction of a linked text database by a  
5 visual editor, which is essentially what the invention starts  
6 with, and that's where the wordified database 20 is  
7 constructed.

8 And this portion of the specification goes on to  
9 recite -- and this is the highlighted part -- that the database  
10 uses a grammar parser and a link engine to build an index.  
11 That index provides a location for each reference in the  
12 database. The database is where the text is located.

13 So when you're looking to determine the beginning  
14 position and address of the textual source material, you're  
15 going to look for the index that provides a location for each  
16 reference. And it goes on to say that all the text references,  
17 audio references, graphic references are included, so that is  
18 how you get to the text that you want to locate.

19 And then slide 26. This is a section, Your Honor,  
20 further in the specification that's under the compilation  
21 stage. There's a couple of headings which Your Honor would  
22 have noted. This is in the compilation section, and it talks  
23 about after the image of the text is created, the cuts are  
24 indexed based upon the position offset from the beginning of  
25 the text.

1           That's where you find the beginning position address  
2 of the textual source information that this term is looking  
3 for, and -- and on the left -- and so we cited the -- from  
4 column seven the references there, and then it goes on to talk  
5 about the start and ends points.

6           THE COURT: All right.

7           MR. YORIO: So when an image is created, the cuts are  
8 indexed based upon position offset from the beginning of the  
9 text, and the system thereby recognizes the first position of  
10 the text in the text file with the visual editor, that's the  
11 structure, and bases the other position addresses relative to  
12 the first position.

13           Dr. Madisetti addressed that in his declaration, Your  
14 Honor, and the point that I just made you can find at  
15 paragraphs 51 to 57 of the Madisetti declaration.

16           An additional reference that I want to call Your  
17 Honor's attention to that is not quite on the screen, and this  
18 is again in column seven of the '731 patent, and going down to  
19 line 40, the user interacts with the electronic book using a  
20 pointing device.

21           When the user clicks within the text image, the  
22 location of the pointer is determined. Location is converted  
23 into a position offset from the beginning of the text, which is  
24 what is compiled earlier in the process.

25           And I think that those references to the spec plus

1 figure one provide adequate corresponding structure under  
2 112(6) for this term 12.

3 THE COURT: What was the extent of the citation that  
4 starts at column seven, line 40?

5 MR. YORIO: Column seven, line 40 through 44. Your  
6 Honor, 40 to 44.

7 THE COURT: All right.

8 MR. YORIO: Unless Your Honor has any other questions  
9 on this term, I believe we've presented the Plaintiff's  
10 position about the structure that's called out in the figures  
11 and specifications.

12 THE COURT: All right. I'll let the Defendants  
13 respond to that. Thank you, Mr. Yorio.

14 MR. YORIO: Thank you, Your Honor.

15 THE COURT: Mr. Blum?

16 MR. BLUM: Good morning, Your Honor. This is for the  
17 record Anthony Blum on behalf of Defendants.

18 So we're on the means for determining the beginning  
19 position address of textual source material stored in an  
20 electronic database.

21 We think a major problem with Plaintiff's proposal  
22 that they've construed this to be a processor programmed to  
23 perform the step of assigning a character position for the  
24 first character of a given set of text within an open text  
25 file.

1 But if you look at the actual claim language, it's  
2 means for determining a beginning position address. This means  
3 there's already a beginning position address, and you now have  
4 to determine it.

5 Plaintiff, however, has changed the meaning of the  
6 claim such that you're assigning a character position. You're  
7 not actually determining what the address is.

8 Sentius hasn't disclosed any structure or any  
9 algorithms within the specification for how the beginning  
10 position address is actually determined. It hasn't disclosed  
11 the algorithm for doing that.

12 I believe opposing counsel put up a similar excerpt  
13 from the '731 patent a few minutes ago. Here we have a key  
14 feature of the system format. It's a method by which the  
15 original book text is indexed and linked with the external  
16 reference.

17 During the compile process, an image of the text is  
18 created. When the image is created, the cuts are indexed based  
19 upon the position offset from the beginning of the text. But  
20 here it's telling you that the cuts are indexed based off the  
21 beginning of the text.

22 But it doesn't tell you how the address of the  
23 beginning of the text is actually determining. It doesn't  
24 provide an algorithm for figuring out what the beginning  
25 position address actually is, and that's required under the

1 Federal Circuit case law.

2 While Sentius focused on the descriptions in the  
3 specification that was just shown in the previous slide, in the  
4 reply brief it really seems to change its theory, and the reply  
5 brief then points to the visual editor and the grammar parser.

6 And it explains techniques for determining the  
7 beginning point position of the text as well as determining the  
8 starting and ending point position of the individual words  
9 relative to the beginning point position were well-known in the  
10 art and being performed by known visual editors of the day with  
11 grammar parsers. But the problem is the visual editor is not  
12 an algorithm. It's not a step-by-step procedure for performing  
13 a result.

14 The other problem is the visual editor is not  
15 actually linked to this function of determining the beginning  
16 position address, and under the Federal Circuit's case law in,  
17 for example, Default Proof and a number of other cases, a  
18 structured disclosed in the specification is corresponding  
19 structure only if the specification or prosecution history  
20 clearly links or associates that structure to the function  
21 recited in the claim.

22 But in the '731 patent, in the '633 patent, the  
23 visual editor and the grammar parser are never clearly linked  
24 to this function of determining a beginning position address.

25 Can you move to slide 20? If you do a -- if you

1 search the specification for the word visual editor, it's only  
2 going to appear three times in the entire patent, including the  
3 claims. It's twice in the specification and once in figure  
4 one.

5 The first instance in the specification where visual  
6 editor is described shown on slide 20, the '731 patent, column  
7 five, lines seven through 15, an electronic book and/or  
8 multimedia source material is provided as a teaching resource.

9 And it goes on to say a text file ten, which may  
10 include sound images and/or videos, is edited during  
11 construction of a linked text database by a visual editor that  
12 is used to build a wordified database, and then it goes on to  
13 say the database source is a grammar parser and a link engine.

14 So here it's only linking visual editor to two  
15 different aspects. One is the visual editor can edit the text  
16 file and then, two, the visual editor can build a wordified  
17 database. It never describes the visual editor as determining  
18 the beginning position address, though.

19 The second instance of visual editor appearing in the  
20 specification is at '731 patent, column seven, lines one  
21 through six. Here you can see the specification states the  
22 word cutting process is accomplished using a simple visual  
23 editor, for example, a point and click system using a pointing  
24 device, such as a mouse.

25 Well, here, again, this is talking about the means



1 for cutting limitation that we'll get into later today. It's  
2 not talking about the means for determining a beginning  
3 position address.

4 Go back to slide 37. And because the visual editor  
5 is not actually linked to this means for determining beginning  
6 position address, it is insufficient.

7 Plaintiff's counsel a minute ago also said that the  
8 electronic viewer module is part of this structure, but the  
9 specification never actually discloses that the electronic  
10 viewer module has any connection to the means for determining a  
11 beginning position address.

12 Can we go to slide seven? So you can see here in  
13 slide seven, figure one is an overall schematic diagram of the  
14 invention. It has a number of black boxes starting at the top  
15 with a text file, and you can see the visual editor on  
16 wordified database.

17 The specification describes the first eight means  
18 plus function limitations claim 95 of the '731 patent, but the  
19 numbering will be a little bit different on the '633 patent,  
20 but the first eight limitations are all linked to the top half  
21 of figure one.

22 The -- so then the latter limitations, I think it's  
23 the last five in the '731 patent, starting with means for  
24 displaying and ending with the second means for displaying,  
25 those are all performed by the bottom half of figure one where

1 you have the electronic viewer module. And Sentius, they  
2 actually agree with this throughout the technology, throughout  
3 its technology tutorial.

4 I don't think I have the correct slide for this  
5 limitation, but throughout the technology tutorial it goes --  
6 Sentius goes element-by-element and then highlights the boxes  
7 in figure one, which it thinks is responsible for that  
8 function.

9 And when you get to the means for determining a  
10 beginning position address, it will have boxes on the top half  
11 of figure one highlighted, not the electronic viewer module,  
12 and that's because the electronic viewer module has no  
13 connection. It's not clearly linked or clearly associated with  
14 this step of means for determining beginning address.

15 Slide 37. I would actually reference the Court to  
16 Sentius' technology tutorial. It's page 21 of that tutorial,  
17 where for the means for determining a beginning position  
18 address Sentius identifies the text file and individual editor.  
19 It does not identify the electronic viewer module.

20 But the visual editor, as discussed, is also  
21 insufficient to be the structure. It's not a step-by-step  
22 procedure. It's not an algorithm. But even assuming arguendo  
23 for the moment that it was an algorithm, it's insufficient  
24 under the Alfred E. Mann decision cited in the briefs.

25 In the Alfred E. Mann case, there is a MPF

1 limitation, which was a means for generating data indicative of  
2 the audio signal, and there the patent owner argued the term  
3 wasn't indefinite because there was a microprocessor which  
4 implemented a log rhythmic conversion algorithm to generate  
5 data indicative of an audio signal.

6           The Federal Circuit, however, rejected that for  
7 several reasons, and one of those reasons was that a log  
8 rhythmic conversion could be implemented through multiple  
9 algorithms and no specific algorithm was disclosed in the  
10 specification.

11           Here we have the exact same issue. I mean, there are  
12 many different visual editors. Sentius itself throughout its  
13 exhibits admits that. They cite to it in the EMACS visual  
14 editor, the VIM visual editor, and we all know about Microsoft  
15 Word, Go Pad, and a whole host of other visual editors.

16           But the '731 patent, the '633 patent, they never  
17 disclose any specific visual editor or any set of visual  
18 editors as would be required under Alfred E. Mann. Another  
19 problem with Sentius' theories is that in its declaration and  
20 throughout its briefs, it's basically making the argument that  
21 the visual editor performs all these functions.

22           It's saying -- its expert Dr. Madisetti says you  
23 would take an off-the-shelf visual editor, and then you would  
24 modify the -- I guess the code of the visual editor with  
25 well-known algorithms to achieve the invention of the '731

1 patent.

2 That's inconsistent with what the '731 patent  
3 actually discloses. The '731 patent doesn't disclose the  
4 visual editor doing everything. The visual editor is only one  
5 module of many other modules and other elements, as you can see  
6 in figure one.

7 The visual editor builds a wordified database. The  
8 wordified database sources a grammar parser and link engine and  
9 the steps go on. There's no evidence in the record.  
10 Dr. Madisetti didn't testify that somehow you can just take  
11 EMACS or another visual editor such as VIM and, you know, use  
12 that in the invention to create a wordified database.

13 THE COURT: I mean, with respect to the Alfred E.  
14 Mann case, if the specification disclosed several algorithms,  
15 in this case several visual editors, I don't think it would be  
16 problematic that there are several disclosed.

17 I think the problem that the Court focused on in  
18 Alfred E. Mann is that it could be any -- the -- the  
19 specification there just referred to a general set of them as  
20 opposed to specific examples.

21 MR. BLUM: I 100 percent agree with you, Your Honor.  
22 I think there, though, the Court explicitly said that no single  
23 algorithm or set of algorithms was disclosed, so certainly you  
24 could disclose multiple algorithms.

25 But I think here we have the exact same thing where

1 there's no algorithm disclosed. It could be a processor  
2 programmed to perform the function in any manner whatsoever.

3 THE COURT: Well, my -- the comment, I guess, was  
4 referring back to if there are several visual editors  
5 disclosed, I don't think that that is a flaw as long as they  
6 are disclosed.

7 MR. BLUM: So if several visual editors were  
8 disclosed in the specification and a visual editor was actually  
9 capable of performing these function, that might not be a  
10 problem.

11 Here we don't have several visual editors disclosed  
12 in the specification. It's only the black box that says visual  
13 editor. It's only in the briefings and their declarations have  
14 they identified specific visual editors.

15 THE COURT: Okay. Well, I agree it needs to be in  
16 the specification, but all right.

17 MR. BLUM: Thank you, Your Honor. That's all I have  
18 for this term.

19 MR. YORIO: Rebuttal to that point, Your Honor?

20 THE COURT: Yes, definitely.

21 MR. YORIO: The visual editor that is disclosed at  
22 various points in the specification and the figures is  
23 discussed by Dr. Madisetti in his declaration, and the  
24 specification in our case goes to the various steps about how  
25 the visual editor was used.

1           And you see that under the word cuts and the  
2           compilation stages, and it goes through step-by-step how the  
3           system works when a user uses a pointer or a mouse to select  
4           certain references.

5           THE COURT: So point me now to the part of the  
6           specification that you would say links the visual editor to the  
7           function that we're dealing with here, the means for  
8           determining a beginning position.

9           MR. YORIO: It's -- this particular slide that's up  
10          right now, Your Honor, in column seven, during the compile  
11          process created an image of the text, and then the next step is  
12          to locate the beginning of the text, and the next sentence  
13          talks about Your Honor's inquiry.

14          When the image is created during compilation, cuts  
15          are indexed based upon the position offset, which the  
16          specification tells you how to locate from the beginning of the  
17          text.

18          Dr. Madisetti says that one skilled in the art would  
19          know that that reference, in order to input the text file into  
20          the visual editor, the system would open the file and identify  
21          the starting location or beginning position address of the text  
22          file.

23          THE COURT: Well, I guess what I'm asking is, is  
24          there anything that links the visual editor to this?

25          MR. YORIO: That is in column five, I think, slide

1 33. This takes through -- word cuts is the stage before  
2 compilation, and this sets up the file for the compilation  
3 portion, and you see here the references to column seven and  
4 column five.

5 Let's just look at another one. So in the second  
6 paragraph here, beginning with figure one, that's the column  
7 five reference. It talks about the text file, what's shaded  
8 there from line -- line eight -- line eight to 19. It goes  
9 through the process about how the text file is developed, what  
10 it consists of, and then how the visual editor is used to build  
11 the wordified database using those text files.

12 THE COURT: Does that refer anywhere to determining a  
13 beginning position addressed?

14 MR. YORIO: In line 16, the index provides the index  
15 that it tells you how to prepare and build, provides a location  
16 for each reference in a database, and includes a relational  
17 database tangent and linkable entities with the text  
18 references, and then it goes on.

19 And then when you go to column seven in the  
20 compilation process, which is on slide 26, so when the image is  
21 created, cuts are indexed based upon the position offset from  
22 the beginning of the text. So you look at the word cut and the  
23 compilation stages together to determine the beginning position  
24 address.

25 So the text file is loaded. The index tells you its

1 location, and then the cuts are indexed based upon the position  
2 offset from the beginning of the text.

3 THE COURT: I understand it says it's using the  
4 beginning position, but where does it talk about determining  
5 the beginning position address?

6 MR. YORIO: As Madisetti indicates in his  
7 declaration, and he's referring to both columns five and seven  
8 and figure one, the wordified database, which is a list of the  
9 words, the process described in those sections, and then a  
10 person of ordinary skill in the art would know that in order to  
11 input the file into a visual editor, the system must know the  
12 starting location of the text file.

13 You'll need to take an additional step. There's  
14 adequate support in the specification together what a known  
15 technique in part is known to one of ordinary skill in the art,  
16 which is what Enfish specifically permits.

17 That's sufficient to provide the structure in a  
18 multi-step algorithm of the type we have here, so four-step  
19 algorithm in Enfish and a two-step algorithm in Alfred Mann.  
20 There's multiple steps here, but the holding is the same.

21 Where you have some structure that covers the  
22 particular element you're talking about, you can in part add to  
23 it by known techniques through --

24 THE COURT: I understand, but the structure still has  
25 to be linked in the specification to the function. And, I



1 mean, that's part of the trade off in using means plus function  
2 claim, and that's what I'm struggling with here.

3 I understand that you're able to describe it and your  
4 expert Madisetti is able to well describe it, but I'm trying to  
5 find where the specification sets it out.

6 MR. YORIO: It's a combination of the steps that I've  
7 referenced in terms of the index that's created, which has  
8 locations, and then the cuts index based on the offsets. The  
9 text -- the text, once it's loaded and the location is there,  
10 the beginning location is already set. That goes back to the  
11 column five references I mentioned earlier.

12 THE COURT: Okay.

13 MR. YORIO: If you're looking at figure one in  
14 conjunction with the text and the specification in columns five  
15 and seven, lines 29, 39, that you see here, if you look at any  
16 one of them in isolation, I understand Your Honor's concern.  
17 If you look at them together, figure one plus column five plus  
18 this, these -- lines of column seven, you get adequate  
19 structure under Enfish and Alfred Mann.

20 THE COURT: And what does this tell us about the  
21 address?

22 MR. YORIO: Go to the slide 25. Slide 25 has the  
23 column five reference, and the index that is built here using  
24 the visual editor and grammar parser and a link engine locates  
25 each textual and audio/video reference in the source material.

1           Index provides a location -- that's the key word --  
2           for each reference in a database, so you know where that  
3           reference is located, and you know where the beginning of the  
4           text is.

5           You go -- when the user clicks in the next steps, it  
6           goes right to that -- right to that reference. I think that's  
7           adequate support to identify where the location of the  
8           beginning position address of the particular text file that  
9           you're looking at.

10          THE COURT: All right.

11          MR. BLUM: Your Honor, can we have a very quick,  
12          short response to that?

13          THE COURT: Yes, that's fine.

14          MR. BLUM: Your Honor, we just wanted to reiterate  
15          that nothing Mr. Yorio just read from the specification  
16          actually links the visual editor to this step, and I think in  
17          all those excerpts you don't even find the word visual editor,  
18          and instead it's other elements in figure one --

19          THE COURT: I have not forgotten your argument.  
20          Don't worry.

21          MR. BLUM: Then I'll step down.

22          THE COURT: Thank you. Let's go ahead to the next  
23          term that Plaintiff wants to present.

24          MR. YORIO: I think that will be claim term 14.

25          THE COURT: All right.

1 MR. YORIO: If you'll pull up slide 27, and this is  
2 term 14 in Your Honor's preliminary construction, and this is  
3 the means for determining starting point address and ending  
4 point address of at least one of the plurality of discrete  
5 pieces.

6 Similar to the point that we made with term 12, we  
7 would supplement the structure reference that you see there by  
8 the visual editor and the grammar parser and link engine  
9 together with the electronic viewing module. The specification  
10 references are similar here, Your Honor. The argument's not  
11 identical, but similar.

12 Next slide 28. Again, when you're turning the --  
13 you're looking for the starting point address and ending point  
14 addresses, you look in the compilation process. When the image  
15 is created, the cuts are indexed based upon the position  
16 offset, and then the start and end points of the cut text are  
17 recorded in a look-up table along with links to external  
18 references.

19 Go back to slide 25. Although this is under the  
20 previous term, it's the same reference into column five  
21 beginning at five through 19, and what you see there is that  
22 the visual editor is used to build a wordified database similar  
23 to the last term, and the database in turn sources the grammar  
24 parser and link engine to build an index.

25 The index again provides a location to reference in

1 the database, not only the beginning portion of the text, but  
2 it also allows you to determine the starting and ending point  
3 addresses in the compilation step that you see in column five.

4 So this the column five reference plus figure one and  
5 the column seven reference on compilation provide sufficient  
6 disclosure of how the start and end points of the particular  
7 referenced discrete pieces -- excuse me -- are located.

8 THE COURT: Is there any difference in the structure  
9 you're proposing for these two limitations?

10 MR. YORIO: I think it's the same, Your Honor.

11 THE COURT: All right.

12 MR. YORIO: The references in figure one and in the  
13 specification columns five and seven are the same.

14 THE COURT: And the limitation that we've referred to  
15 as the number 12 is the one that is identifying the overall  
16 block of external -- no, it's the --

17 MR. YORIO: Textual material.

18 THE COURT: -- textual material that is being  
19 analyzed.

20 MR. YORIO: So that would be the entire text, and  
21 then the beginning position and ending piece of position  
22 addresses are for the discrete piece that is selected to be  
23 part of the text.

24 THE COURT: All right.

25 MR. YORIO: And the specification references and the

1 figure one cover both of those, both identifying where the text  
2 begins and where its location is and where the cuts are for  
3 starting end points that are recorded in the look-up table.

4 Obviously the look-up table is clearly described in  
5 the specification and is more than adequate corresponding  
6 structure.

7 THE COURT: The -- these addresses that we're talking  
8 about in this limitation we're referring to as 14 are  
9 determined from the beginning position address, which is the  
10 address we were talking about in 12; right?

11 MR. YORIO: Right. So the index -- in column five on  
12 this slide, the index provides a location for each reference,  
13 so that would be the text that we're talking about.

14 And then when you go to column seven, slide 28, after  
15 the image of the text is created, then the cuts are indexed  
16 with start and end points that you see referenced there, Your  
17 Honor.

18 And the cut -- the beginning and ending point  
19 addresses are recorded in the look-up table with the link to  
20 the external reference that you've already looked at.

21 So it -- think of it if it's a file that would look  
22 something like a patent, you've got the whole patent is already  
23 loaded and locating, and you're just highlighting certain parts  
24 of the patent, similar to what we've done in the slides, so  
25 that would be reasonable analogy.

1 THE COURT: So you're -- the structure you're  
2 proposing would be the -- the video editor or -- I'm sorry --  
3 the visual editor?

4 MR. YORIO: Plus the grammar parser and the link  
5 engine. That's how you create the index, and then the cut  
6 points start and end points in the text are recorded in the  
7 look-up table, so I guess I would add the look-up table to the  
8 list, Your Honor.

9 THE COURT: And the part of the specification that  
10 you contend links these structural elements to this function  
11 are the passages you cited from columns five and seven?

12 MR. YORIO: Right, and figures one and two.

13 THE COURT: All right.

14 MR. YORIO: Let me look at maybe one other segment,  
15 Your Honor.

16 In column six, Your Honor, there's a description on  
17 figure two. I don't have a slide, but it describes the flow  
18 diagram in figure two. And beginning on column six, line 49,  
19 it talks about to find a reference to a particular word or  
20 selected entry displayed on the screen, the user clicks the  
21 text that is viewed with a pointing device, such as a mouse.

22 Click position is determined and used to calculate an  
23 offset value within the text 200, and it goes on to describe  
24 exactly how a particular click at horizontal and vertical  
25 coordinates 175 provide you with an offset value, and that's 6,

1 46 through 65, Your Honor, column six, lines 46 through 65.

2 THE COURT: All right.

3 MR. BLUM: Your Honor, for the means for determining  
4 a starting point address, again, Sentius is essentially  
5 invoking the Katz exception where the construction is  
6 essentially a processor program to perform this -- to perform  
7 the function at any manner whatsoever.

8 The Katz exception doesn't apply, though. As you  
9 know, the Katz exception only applies in rare circumstances for  
10 things such as storing. You can actually see this based upon  
11 the agreed constructions for beginning point address and ending  
12 point address. There, the parties agreed that the terms are  
13 simply the offset value from the beginning position address to  
14 the starting point.

15 So essentially Sentius has done in its construction  
16 is to say a processor programmed to perform the function, and  
17 then they stick in the concept of this offset value or the  
18 starting and ending character positions offset from the first  
19 character position.

20 In addition, Sentius hasn't identified any structure  
21 or any algorithm or step-by-step procedure for performing the  
22 function in the specification of the patents. Sentius points  
23 to the following excerpts from the '731 patent, the database 20  
24 sources a grammar parser and a link engine that builds an  
25 index, which, in turn, locates each textual and audio/video

1 reference in the source material.

2 But, again, this isn't -- this doesn't really have  
3 any connection to how the starting point, ending point are  
4 determined based upon beginning position address.

5 Sentius also cited to the second excerpt where it's  
6 when the image is created, the cuts are indexed based upon the  
7 position offset from the beginning of the text. The start and  
8 end points of the cut texts are recorded in a look-up table  
9 along with the links to the external references.

10 But the problem here is this doesn't tell you how the  
11 starting and ending points are determined. It doesn't tell you  
12 the algorithm for calculating that offset value.

13 In the reply brief and here today Sentius seems to be  
14 focusing on the visual editor, and in the reply brief, Sentius  
15 stated notably, Defendants do not dispute that a visual editor  
16 is disclosed as performing the claimed functions.

17 Well, in the opening brief, visual editor didn't even  
18 appear to be their argument. Visual editor doesn't appear in  
19 the opening brief with respect to this claim limitation.

20 But really for reasons that are very similar to what  
21 we just discussed with means for determining a beginning  
22 position address, a visual editor is insufficient. It's not a  
23 step-by-step procedure, and no specific visual editor or set of  
24 visual editors was disclosed in the specification.

25 Sentius also mentioned the look-up table today, but



1 that couldn't be the structure because the look-up table is  
2 simply where the addresses, where the offset values are stored.  
3 The look-up table doesn't actually perform the process of  
4 determining what the addresses or what the offset values are.  
5 It doesn't perform the function and, therefore, cannot be the  
6 structure.

7 Sentius today has also pointed to the -- I believe  
8 it's the -- besides the visual editor, it's also pointed to the  
9 grammar parser and link engine, but, again, those are just  
10 simply black boxes. They're not algorithms.

11 They have -- they have -- well, as Your Honor knows,  
12 the algorithm actually has to be disclosed in the  
13 specification, but while it wouldn't be sufficient that an  
14 algorithm is well-known in the part, we actually don't even  
15 have any evidence in the record that wordified databases or  
16 link engines or grammar parsers are well-known.

17 And then as we discussed earlier with the Default  
18 Proof case, there has to be that clear link or clear  
19 association, and nowhere in any of the citations that Sentius  
20 has discussed today is the visual editor ever linked to the  
21 step of means for determining the starting and ending point  
22 addresses.

23 Oh, and one last thing. At the end of Sentius'  
24 presentation they referred the Court to paragraph six of the  
25 '731 patent. If you'll flip to slide seven. So in that

1 excerpt from column six of the '731 patent, it talks about --  
2 it's describing the flow of figure two, and it talks about to  
3 find a reference to a particular word or other selected entry  
4 displayed on the screen, the user clicks -- I think that should  
5 be clicks -- the user clicks the text that is viewed with a  
6 pointing device such as a mouse.

7 What this is actually talking about is this is  
8 describing the electronic viewer module. This is at the end.  
9 This is describing what you would see as shown in figure three  
10 where there's Japanese text being displayed. The user can  
11 click on it and then get the external reference materials.

12 But this is happening in the electronic viewer  
13 module, which is on the bottom half of figure one, but as  
14 Sentius described in its technology tutorial, the bottom half  
15 performs the last eight limitations. It doesn't perform the  
16 first five MPF limitations.

17 So there's absolutely no clear link or clear  
18 association between the electronic viewer module or what  
19 Sentius read from column six to this MPF limitation for means  
20 of determining starting and ending point addresses.

21 Accordingly, BlackBerry believes the claim is  
22 indefinite because there's no structure set forth.

23 THE COURT: All right. Thank you, Mr. Blum.

24 MR. YORIO: Would you leave that slide up that you  
25 have in column six? Oh, I'm sorry. Could you -- slide 31.

1 side 31, although it's for a different term, Your Honor, it  
2 does have part of the column six reference.

3 THE COURT: I've got the patent in front of me.

4 MR. YORIO: Okay.

5 THE COURT: So it's not a problem.

6 MR. YORIO: Okay. So the -- the point that counsel  
7 was making is that there -- because the visual editor is  
8 described in the cutting and the compilation part of it, it  
9 doesn't have any application in figure two.

10 Well, that's not correct. The visual editor sets up  
11 the process and the flow that you see in figure two after the  
12 index has been created and the cutting part of the algorithm.

13 In figure two, it describes the flow diagram. Your  
14 Honor can see the rest of it. It takes the reader through all  
15 the steps to find a particular word, and it talks about how the  
16 offset value is located by virtue of clicking a particular  
17 horizontal and vertical coordinates.

18 The specification is very clear about how this is  
19 determined, and this tells you exactly how the system works to  
20 do that.

21 THE COURT: But the -- the discrete pieces with their  
22 starting point and ending point addresses have already been  
23 determined before what's described there happens, haven't they?

24 MR. YORIO: I don't think that they're that isolated,  
25 Your Honor. I think that the -- I understand counsel's

1 argument that they come later in the step, but this talks about  
2 how you determine a particular offset value, and that, by  
3 definition, is the beginning and ending point addresses of a  
4 particular discrete piece.

5 If you look at figures one and two together and the  
6 column five, six, and seven references together, you have more  
7 than adequate structure in my view to support this particular  
8 element.

9 THE COURT: Isn't the click position that's being  
10 referred to in that passage from column six a position that the  
11 user moves to?

12 MR. YORIO: Well, the user uses the pointing device.  
13 The system takes over there to locate the coordinates and  
14 the off -- calculate the offset value, as you see in figure  
15 two.

16 THE COURT: And by the time any of this is shown on  
17 the display for the user, the limitation described here has  
18 already occurred, hasn't it?

19 MR. YORIO: Well, as we said in figure -- slide 26,  
20 it talks about the -- the index being constructed during --  
21 this is in the cut -- the word cuts part of the patent, so it's  
22 earlier in the process.

23 And it talks about the cuts being indexed based on  
24 the position offset, figure -- and the start and end points of  
25 the cut text are recorded in a look-up table, along with the

1 links to external references, and that is a reference to what  
2 you saw in figure two.

3 I don't -- I think there is a -- when you read the  
4 specification and you read columns five and six and they talk  
5 about a sequential practice of the system, but when you get to  
6 column seven, it sort of summarizes a bit of what has been  
7 included before, and that's what you see here in the column  
8 seven reference. I would say this part of column seven  
9 essentially merges figures and one and two with respect to  
10 offset.

11 THE COURT: Are you saying that the click position on  
12 the screen, on the display has something to do with determining  
13 the starting point address and ending point address of the  
14 discrete pieces?

15 MR. YORIO: Well, how -- the discrete pieces have to  
16 be determined somehow, and it has to start with a click because  
17 the system needs to know what are you looking for. The user  
18 starts that process with the mouse.

19 THE COURT: That's the way the user identifies which  
20 of the discrete pieces the user is interested in.

21 MR. YORIO: Right.

22 THE COURT: But what does that have to do with  
23 assigning starting point and ending point addresses for those  
24 discrete pieces?

25 MR. YORIO: Well, how do you know what the discrete

1 piece is until the user makes a determination. It has a text  
2 file that you locate it.

3 THE COURT: Doesn't the system already have it  
4 indexed before the user ever starts?

5 MR. YORIO: Well, it's indexed for the whole thing,  
6 but what is the user going to locate. What is the user  
7 interested in when he clicks, but all of the pieces in the text  
8 file are already located, and you see that in figure one.

9 THE COURT: And they have addresses already assigned  
10 to them, right?

11 MR. YORIO: That's right. That's in slide 25, I  
12 think.

13 THE COURT: I'm just confused. If you're saying that  
14 this limitation is related to the user clicking on the screen,  
15 I --

16 MR. YORIO: Well, it's related to it in the sense  
17 that if the beginning and ending point and position addresses  
18 of the textual source material were located, the user could not  
19 select a particular word on which to click.

20 So you go back to column five here, and it talks  
21 about the visual editor building an index which locates each  
22 reference in the source material, which includes the beginning  
23 position and an ending position addresses -- starting and  
24 ending position addresses for any of the discrete pieces. And  
25 that's using figure one.

1           Each reference in the database has its own location.  
2 By definition, a location has a starting and an ending point  
3 address, and this is from column five, this reference here,  
4 column five, five to 19.

5           And because you have that there, when the user clicks  
6 on a word, they're able to find the particular offset value  
7 that you see in figure two.

8           THE COURT: All right.

9           MR. YORIO: Thank you, Your Honor.

10          THE COURT: Thank you, Mr. Yorio.

11          MR. BLUM: Your Honor, I think you're interpreting  
12 this correctly that when the user is clicking on the Japanese  
13 text, these offset values have already been determined.  
14 They've already been stored in the offset index as shown in  
15 figure one. They're already been stored in that offset index,  
16 and you can see that pretty clearly in figure one.

17          There are no arrows from the electronic viewer to the  
18 top half of figure one. The electronic viewer doesn't interact  
19 with the visual editor or the link engine. Instead, the top  
20 half of figure one is the process that creates the file which  
21 is on the bottom left of figure one, and then the electronic  
22 viewer is simply able to read the information that's already  
23 been stored in that file.

24          Thank you.

25          THE COURT: All right. Thank you, Mr. Blum.

1                   What is the next term that you want to address?

2                   MR. SETH: Your Honor, I think we'll -- excuse me. I  
3 think we'll address 16 and 17.

4                   THE COURT: Very well.

5                   MR. SETH: Or 16. So following on what Mr. Yorio and  
6 the specification is describing, and as the Court pointed out,  
7 we have indexed the locations of all of the words in an offset  
8 index.

9                   And as Your Honor points out, there's going to be --  
10 the system is going to receive an input now from the user  
11 because the whole point is to allow the user to see selected  
12 reference materials for a given -- for a given selected word,  
13 to see the reference materials that the system has recorded  
14 links to in the look-up table.

15                  And so going to the -- actually in -- in claim  
16 element 15 in the preliminary construction, that starts the --  
17 that relates to the procedure where -- where the user has given  
18 that input by basically identifying a word that they want or  
19 selecting a word that they want to see the external reference  
20 materials for. And what the system has to now do is take the  
21 click location and convert it to an offset value.

22                  And can we go to slide 36, please? I'm sorry.  
23 Thirty-seven. And so we're -- we're actually going to be  
24 reviewing some of the same portions of the specification  
25 because everything is sort of tied together.



1           So in column seven, which we talked about a little  
2 earlier, in 40 through 49, we have the interaction that's  
3 taking place through the viewer module, or sometimes referred  
4 to as the electronic viewer, that the user is using to interact  
5 with the system and clicking on.

6           Now, it's a text image that's been displayed with  
7 the -- behind the image are the index offset values of each of  
8 the words, and the user is now clicking on one of them, and  
9 the -- as we see in figure two in the example given in -- for  
10 just as a description, they're clicking on a coordinate of 175,  
11 and that's returning an offset of 25.

12           And that is going to -- that's -- that's done so that  
13 the system then in claim element 17 can select one of the  
14 external reference materials, which it's going to do by going  
15 into the look-up table for that offset and then seeing what the  
16 recorded link is.

17           And in the process of seeing that recorded link, it  
18 selects the -- the link is pointed already to the external  
19 reference material that will then be retrieved and then  
20 displayed in the pop-up window.

21           THE COURT: And that part basically says to me that  
22 you determine it. What I'm looking for is the means for doing  
23 so.

24           MR. SETH: Yes, Your Honor.

25           And the means for doing so is the offset index that

1 you have already compiled by virtue of determining the  
2 beginning -- so you've determined the beginning and the ending  
3 location of every word in the document.

4 And that's what any visual editor has to do because  
5 it has to know -- it has to be able to know what to show on the  
6 screen, and so it needs a mapping of all of the -- it needs the  
7 offset index so that it can display wherever you are scrolled  
8 to within the document.

9 So that offset index is referred to in -- or the  
10 indexing and creating the offset index is referred to in all of  
11 the specification previously cited in the various places, but  
12 here what we're focusing on is -- I'm sorry. Can you go slide  
13 38? Yeah.

14 This is cut off, Your Honor, from column six -- I'm  
15 sorry -- column seven, 29 to 39, and what we're doing is when  
16 we're compiling -- the -- the cuts -- the cuts, the words are  
17 indexed and based upon the position index from the beginning of  
18 the text -- we've talked about this.

19 This is the starting end points of each of the words.  
20 Some of those words, or it could be all of those words, are  
21 going to be recorded in the look-up table. But all of the --  
22 all of the words have been indexed. They have to be so that  
23 the visual editor knows where to put, for example, the cursor  
24 location.

25 So if you're in a Word document, for example, and

1 you're pointing to a -- clicking on to a particular place in  
2 the screen, the insertion point -- in order for the system to  
3 know where the insertion point goes, it has this offset index,  
4 this mapping, if you will, of coordinates to the offset  
5 position within the document, the location within the document  
6 of any given click.

7           And so that's really all you're doing is you're  
8 consulting the offset index that's referred to to determine  
9 which position -- where -- if you're using the visual editor in  
10 a normal way, it would be where to put the insertion point, for  
11 example.

12           But it's the same technique that's being used here  
13 just to determine where the click is taking place, at which  
14 word has the click taken place, so that we can take that --  
15 that click position, that location in the document, and then  
16 consult the look-up table to see is it one of the words that  
17 we've recorded in the look-up table as being linked to some  
18 external reference material.

19           So we can't get to the look-up table and see whether  
20 the word clicked on is a word that has external reference  
21 material without first converting the click location to the  
22 position within the document.

23           And that was also extensively discussed in  
24 Dr. Madisetti's declaration because this isn't anything new.  
25 Any visual editor has to know where to be able to put the

1 insertion point, so they always have to have the mapping or an  
2 offset index, if you will, that will convert a click location  
3 in the document to a place -- I'm sorry, click location on the  
4 screen to a place in the document.

5 And -- and -- and that feature is described here, a  
6 reference here specifically with regard to this claim element  
7 of converting display address to an offset value from the  
8 beginning position address.

9 And it's referred to most particularly in the second  
10 highlighted on slide 38, Your Honor, describing figure two,  
11 where it says to find a reference to a particular word or other  
12 selected entry displayed on the screen, the user clicks the  
13 text that is viewed with a pointing device such as a mouse.

14 The click position is determined and used to  
15 calculate the offset value within the text, and then it goes on  
16 to describe the example shown in figure two itself, and so that  
17 is where the step is being described.

18 And then it -- and then if I might just finish with  
19 element 17, once the -- the -- once the click position was --  
20 was determined and then to convert it to figure out where in  
21 the document it is by consulting the offset index, then you  
22 will -- you will go to the look-up table.

23 And that's in the comparison -- I'm sorry -- means  
24 for comparing, that's element ten, and you're basically just  
25 going to look in the look-up table and see, okay, well,

1 position 25 in the document doesn't correspond to an entry in  
2 the look-up table.

3 Oh, well, there's an entry here within which falls  
4 offset position 25. Let me select the external reference  
5 material by looking at the -- by identifying the pointer or the  
6 link -- linking information, which is essentially a pointer, to  
7 the external reference material.

8 So if it's Kanji for Japanese economy at that  
9 location, that offset position in the document, it's being  
10 linked by a pointer to a database that says, okay, well, the  
11 yomi, kanji for Japanese economy, is being linked to the  
12 English translation, Japanese economy.

13 So the look-up table is -- is there to select the  
14 external reference material that you're going to be -- and  
15 using the link to retrieve and then displaying the pop-up  
16 window.

17 I think that's what we have to say about that.

18 THE COURT: All right. Thank you, Mr. Seth.

19 MR. BLUM: Your Honor, Sentius hasn't pointed to any  
20 algorithm within the specification that describes how this  
21 offset value is actually determined.

22 The limitation is a means for converting the display  
23 address of the selected discrete portion to an offset value  
24 from the beginning position address.

25 Sentius in its brief, in its opening brief, points to

1 the user interface 32, the electronic viewer 43, but these are  
2 simply black boxes. They're not algorithms. They don't tell  
3 you how this offset value is determined.

4 Sentius also points to this excerpt from the '731  
5 patent which reads the click position is determined and used to  
6 calculate offset value within the text. In the example shown  
7 in figure two, the user clicks at a particular location, e.g.  
8 horizontal and vertical coordinates, 100 and 75 respectively,  
9 and offset value of 25 is returned.

10 But the problem here is there's no description of how  
11 you actually calculate that offset value. The algorithm is  
12 completely absent. They only tell you the function, the  
13 result.

14 Now, at first glance in the description, it talks  
15 about horizontal coordinates and vertical coordinate, 100 and  
16 75, offset value 25. So when I first read this the very first  
17 time, I thought, well, maybe the algorithm is 100 minus 75  
18 equals 25, but that can't be correct because, you know, if you  
19 click here at 100, 75, your offset value would be 25.

20 But if you click down here at 150, 125, well, 150  
21 minus 125 is also 25, and they're clearly not the same  
22 distance away from the beginning position.

23 If you're on the -- you know, on the diagonal line  
24 you clicked on 100, 100, 100 minus 100 is zero. You're  
25 certainly not zero away from the beginning position.

1           In the reply brief and here today, Sentius seems to  
2       change its position and now point to the visual editor and also  
3       the offset index. I first want to deal with the offset index.

4           Offset index actually only appears twice in the  
5       specification. I think the first time is in figure one, and  
6       the second time is in -- on column five around line 26 of the  
7       specification.

8           And there the specification simply states the indexer  
9       viewer 29 creates a multimedia resource 30 such as the file 33  
10      that was processed as described above to produce a data  
11      resource 34 and offset index 35 and a link entity -- and link  
12      entities 36 to the data resource for access by the user. So  
13      there's no detail behind what this offset index is. It's  
14      simply a black box. It's not an algorithm.

15          The other issue is -- I mean, the only thing that  
16      would make sense for the offset index to be would be -- would  
17      be to -- would be that the look-up table is stored in the  
18      offset index, as shown in figure two.

19          But if that's the case, under the claim language you  
20      convert -- you determine the offset value, and then you take  
21      that offset value, and the next means MPF limitation you  
22      compare that offset value to the values that are already stored  
23      in the offset index in the look-up table.

24          And then from there you're able to see if there's a  
25      match, but that has nothing to do with actually converting the

1 display address to figure out what the offset value is.

2 THE COURT: Isn't the offset value the location  
3 relative to the beginning position?

4 MR. BLUM: Yes, Your Honor, I believe that is  
5 correct, but in its proposal -- and previously counsel  
6 discusses that the offset index is actually the structure.

7 In their proposal, Sentius says a processor  
8 programmed to perform the step of determining the offset value  
9 of the displayed location where the user input was received  
10 based upon an offset index, but nowhere in the specification is  
11 it described that the offset value is determine based upon an  
12 offset index.

13 THE COURT: I understand that criticism of the  
14 proposed construction that was in the briefs, and I guess what  
15 I'm really wanting now is more reaction, which I think you've  
16 given me, to the proposed structure that they've identified in  
17 argument.

18 MR. BLUM: Well, I think the other proposal that  
19 they've argued is the visual editor, but, again, the visual  
20 editor is not linked to this means for converting.

21 In their technology tutorial that you see up here on  
22 the slide, they explain that the means for converting step is  
23 performed by the electronic viewer. It's not linked to the  
24 visual editor.

25 The visual editor is not clearly linked or clearly



1 associated with this step of means for converting, and under  
2 the Default Proof case, there has to be that clear link or  
3 clear association.

4 As discussed earlier, that's exactly how the  
5 specification actually describes figure one. In figure one,  
6 the electronic viewer reads the file, I believe that's 33, but  
7 it has -- there are no arrows between the electronic viewer and  
8 the visual editor or any of the other boxes those are on the  
9 top half of figure one.

10 So the visual editor plays no role in this step of  
11 converting display address of the selected discrete portions  
12 with offset value.

13 THE COURT: All right.

14 MR. BLUM: Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Blum.

16 MR. SETH: Could you put it on slide 36?

17 So in our proposed construction for the means for  
18 converting, Your Honor, we're saying it's a program --  
19 processor programmed to perform the step of determining the  
20 offset value of the display location where the user input was  
21 received based upon an offset index.

22 And we believe that our citations show and the  
23 specification is very clear that for every -- that for all --  
24 all the words, there is an offset index that relates them to  
25 the quick location as any visual editor does.

1           It's just that we're using this now -- instead of  
2 determining an insertion point to now take that offset position  
3 and look in the look-up table.

4           I'm going to turn to 17, the means for selecting one  
5 of the plurality of external reference materials -- oh, Your  
6 Honor, before I do, I just wanted to point the Court also to  
7 five, 23 to 28, because I'm not sure I had that in the slide  
8 for this section. That's another reference to the offset index  
9 and how it's being used.

10           All right. Going to element 17 of the means for  
11 selecting one of the plurality of external reference materials,  
12 corresponding to the identified one of the plurality of  
13 discrete pieces.

14           Can we go to slide 40?

15           MR. DAVIS: Forty.

16           MR. SETH: Yes, please.

17           All right. And we're proposing the structure here is  
18 a processor programmed to perform the step using the pointer  
19 for the matched offset value range to identify a corresponding  
20 external reference material.

21           That's a lot of words, but basically what we've done  
22 now is we've taken the click location. We've now consulted the  
23 offset index. We now know where they clicked on in the  
24 document. We've looked in the look-up table to see if there is  
25 a corresponding range of offset values within which this falls,

1 and if there is, we're selecting an external reference material  
2 by going to the pointer.

3 The system has -- can be used for any -- any end  
4 purpose. Whatever you want to link to, you can as long as you  
5 store that linking information in the row, in the look-up table  
6 for that offset range, English translation, spelling  
7 correction, whatever it is you want to link it.

8 But you've got to put that pointer into that look-up  
9 table, and you've got to figure out if the click location  
10 matches a range in the look-up table so that you can identify  
11 what the pointer is for that particular word that was clicked  
12 on by the user so that you can go retrieve the external  
13 reference material.

14 This is simply the step of identifying the -- the --  
15 if you will, selecting the external reference materials by  
16 going and looking in the look-up table and finding the pointer  
17 for it, and that's really all this step is.

18 And then there are -- there's all -- there's further  
19 on in the claim after you've identified the pointer, you can  
20 then use the pointer to go actually retrieve the external  
21 reference material so that you can put it up in the pop-up  
22 window.

23 So that's all I have on that.

24 THE COURT: All right. Thank you, Mr. Seth.

25 All right. Do you have some brief response on that,

1 Mr. Blum? Go ahead if you do. I just want to break before we  
2 move on to the next term.

3 MR. BLUM: So, Your Honor, I think the problem with  
4 Sentius' interpretation of the function here is that they're  
5 assuming that you do this comparison within the look-up table,  
6 and then it doesn't match. You have the offset value and you  
7 can -- you can then retrieve that pointer to that external  
8 reference material.

9 But the problem is the specification actually  
10 describes that there could be multiple external reference  
11 materials. You see that in figure three of the patent.

12 Here, a user clicks on some of the Japanese texts,  
13 and then you have multiple options, including an English  
14 reference or additional notes. You can select one of those and  
15 then the external reference material is retrieved and  
16 displayed, such as Japanese economy as shown in figure three.

17 And that's actually what the specification describes.  
18 The '731 patent, column nine, 13 to 25, to select a word or  
19 phrase from the book, the user clicks on a word that is not  
20 understood and a pop-up menu immediately appears.

21 Further down in this passage, to view the English  
22 reference information, the user selects the English reference  
23 from the pop-up menu, and the information appears next to the  
24 pop-up menu.

25 This is actually the only time in the specification

1 where it talks about selecting an external -- selecting an  
2 external reference material for them to be displayed, and  
3 Sentius' proposal simply ignores that.

4 Sentius is essentially attempting to rewrite the  
5 claim from selecting to identifying. It's no longer selecting  
6 the corresponding reference material. Instead you just have to  
7 identify it because under their interpretation, there's only  
8 one.

9 However, there's absolutely nowhere in the  
10 specification that provides any description of how this  
11 selection occurs. There are no algorithms in the  
12 specification. Sentius simply just points to conclusory  
13 statements and black boxes in the specification, such as the  
14 application program and the link engine.

15 It also points to this excerpt from the '731 patent  
16 that states when the offset value falls between a component  
17 start and end points, a match is made and an external reference  
18 can be resolved; however, there's no description there on how  
19 that resolving actually takes place or how the selection  
20 process occurs.

21 Sentius, again, they also propose in their briefs  
22 structure, which is not linked clearly associated. Again, here  
23 we're talking about the part of the program that's occurring in  
24 this red box in figure one.

25 But in the briefs Sentius points to the link engine,

1 which in no way is clearly linked or clearly associated to this  
2 step.

3 That's all I have, Your Honor.

4 THE COURT: Okay. Thank you.

5 MR. SETH: Just a brief rebuttal, if we can.

6 THE COURT: All right.

7 MR. SETH: Just have one brief rebuttal. Slide 42,  
8 please.

9 I just wanted to clarify one point, and that is that  
10 the user does not -- the claim term is talking about selecting  
11 the -- the -- the system selecting the external reference  
12 material that it's going to be retrieving and displaying.

13 And the interpretation that Defendants give doesn't  
14 take into account the fact that they're saying that it's a type  
15 of external reference material, not the actual thing that  
16 you're displaying. The user doesn't select the thing that  
17 you're displaying. The system has a link to that.

18 THE COURT: What they're saying, as I understand it,  
19 is that this should be read to be addressing choosing between  
20 multiple external reference materials that the system may  
21 present, and I understand your reading of it is this is just a  
22 system action, not a user action.

23 MR. SETH: That's correct, Your Honor. I just wanted  
24 to -- that's correct.

25 THE COURT: All right. I understand that.

1           We'll take a 15-minute recess now and come back and  
2           take up the rest of the terms that the parties want to address.

3           COURT SECURITY OFFICER: All rise.

4           (Recess taken.)

5           COURT SECURITY OFFICER: All rise.

6           THE COURT: Thank you. Please be seated.

7           What is the next term either side would like to  
8           address?

9           MR. BLUM: Your Honor, with regard to any specific  
10          terms, I think there are no other terms that we need to  
11          discuss.

12          THE COURT: Does the Plaintiff object to the proposed  
13          constructions, preliminary constructions that the Court has  
14          provided to the other terms?

15          MR. SETH: We have no objection.

16          THE COURT: All right. Then I will turn it over to  
17          the Defendant.

18          MR. PARKS: We feel the same way, Your Honor. We  
19          don't have any terms to address, and we don't have any disputes  
20          with the other terms in the preliminary construction.

21          THE COURT: So I can then take it that the parties  
22          agree to the preliminary constructions on the other disputed  
23          terms? Is that -- I see agreement from the Plaintiff.

24          MR. PARKS: Yes, Your Honor.

25          THE COURT: All right. Then is there anything else

1 that we need to take up in connection with the claim  
2 construction?

3 MR. YORIO: Your Honor, just kind of a point of law.  
4 I just want to make a few comments on Enfish.

5 THE COURT: That's fine.

6 MR. YORIO: Your Honor made some observations  
7 about -- can we look at slide 14?

8 We discussed Enfish in the reply brief, Plaintiff's  
9 reply brief, at pages seven and nine, and the point I wanted  
10 to -- and Your Honor referred to certain sections -- phrasing  
11 in the holding.

12 The point that I wanted to call the Court's attention  
13 that I think is particularly relevant here, it's in the  
14 right-hand column, and it states the principal that an  
15 algorithm of the type we have here and the type that was at  
16 issue in Enfish can rely in part on known techniques, known to  
17 persons of ordinary skill in the art.

18 And then the next sentence is, I think, appropriate  
19 here. The sufficiency of the structure, which Your Honor has  
20 to determine, is viewed through the lens of a person of  
21 ordinary skill without the need to disclose structures  
22 well-known in the art.

23 And where -- although I think the specification does  
24 layout steps and structure for all of the elements. Where  
25 there are structures well-known in the art and Madisetti goes



1 through them about what is it a visual editor does and what  
2 those of ordinary skill know that it does and will do, I don't  
3 think that the patent owner has to disclose those structures,  
4 particularly through the visual editor of the time and the  
5 other references, that are well-known to those in the art.

6 If you look at Madisetti's declaration, that's  
7 exactly what he points to, and I think that's appropriate for  
8 the terms that are at issue that we've argued here this  
9 morning, Your Honor.

10 THE COURT: And the only thing I would say to that is  
11 I don't think Enfish changes the longstanding law that there  
12 still must be some structure disclosed and clearly linked to  
13 the claimed function.

14 MR. YORIO: And I understand that, and I think we've  
15 gone -- for the four terms that we've discussed, we have  
16 identified structure that is linked to the function, and -- and  
17 then we can also rely in part, which is what Enfish says, not  
18 to disclose -- we don't have to disclose the structures that  
19 might complete a particular step, as long as there is  
20 sufficient structure to link that specification to the  
21 particular function.

22 THE COURT: And I see that as relating primarily to  
23 the issue of whether the disclosed structure is sufficient to  
24 accomplish the function.

25 I think that you're right that you have to look at

1 what a person of ordinary skill would know in addition to the  
2 use of that disclosed structure, and I will look back at the  
3 sections that you've pointed to from the specification in  
4 connection with the functions that we're dealing with, and I  
5 will get something out as quickly as I can.

6 MR. YORIO: Understood. Thank you, Your Honor.

7 THE COURT: Thank you.

8 All right. I appreciate your arguments. They've  
9 been helpful, and with that, we are adjourned.

10 COURT SECURITY OFFICER: All rise.

11

12 (Hearing concluded.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and  
correct transcript from the stenographic notes of the  
proceedings in the above entitled matter to the best of my  
ability.

Date: 9/12/17

Tammy L. Goolsby, CSR  
Deputy Official Court Reporter  
State of Texas No.: 3101  
Expiration Date: 12/31/18

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